

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

LESEMANN & ASSOCIATES LLC,	)	Civil Action No.: <u>2:19-cv-2638-BHH</u>
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<b>COMPLAINT FOR INJUNCTIVE RELIEF</b>
U.S. DEPARTMENT OF THE	)	<b>FOR VIOLATION OF THE FREEDOM</b>
TREASURY,	)	<b>OF INFORMATION ACT, 5 U.S.C. § 552</b>
	)	
Defendant.	)	
	)	

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COMES NOW Plaintiff Lesemann & Associates LLC, and brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief against Defendant U.S. Department of the Treasury as follows:

**PARTIES**

1. Plaintiff Lesemann & Associates LLC (“Plaintiff”) is a South Carolina limited liability company with its principal place of business located in Charleston County, South Carolina.
2. Defendant U.S. Department of the Treasury (“Defendant”) is a Department of the Executive Branch of the United States government and is an “agency” within the meaning of 5 U.S.C. § 552.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
4. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 139(e).

## **FACTUAL BACKGROUND**

5. On November 14, 2017, Plaintiff submitted a FOIA request to Defendant using the Department of Treasury website requesting disclosure of the following: “Any and all communications, documents, materials, or reports of any kind sent or received by the United States Department of the Treasury by any employee or agent of SC Housing Corp or the South Carolina State Housing Finance and Development Authority that in any way reference or mention the following parties: Robert Thomas, Southeastern Housing and Community Development, Southeastern Housing Foundation, Bamberg County, the Town of Williston, the Town of Blackville, the Town of Estill, or Allendale County. Specifically, any and all communications, documents, materials, or reports of any kind that in any way relate to any performance review, internal audit, or compliance review relating to Southeastern Housing and Community Development or Southeastern Housing Foundation’s ability to participate in the Neighborhood Initiative Program.”

6. By email dated December 14, 2017, Cawana Pearson, FOIA Case Manager, FOIA and Transparency confirmed Defendant’s receipt of Plaintiff’s FOIA request (Request # 2017-11-144) and requested that Plaintiff provide a timeframe for the search no later than thirty (30) days from the date of Ms. Pearson’s email. A copy of the December 14, 2017 correspondence is attached as Exhibit A.

7. Plaintiff informed Ms. Pearson that the timeframe of the Request was from May 1, 2015 to the present and asked if Defendant could run a narrower search to expedite the response to Plaintiff’s FOIA Request. In response, Ms. Pearson stated that FOIA requests are processed “on a first in first out basis” and that there was a “FOIA backlog.” *See* emails between J. Taylor Powell and Cawana Pearson, attached as Exhibit B.

8. By letter dated December 15, 2017, Defendant stated that it had received Plaintiff's Request and would "make every effort to provide you with a timely response," but advised that "unusual circumstances exist regarding the search for and review of potentially responsive records." A copy of the December 15, 2017 letter is attached as Exhibit C.

9. Defendant informed Plaintiff that a time extension was required to process Plaintiff's Request.

10. On January 5, 2018, Plaintiff requested an update on the status of Plaintiff's Request.

11. On January 9, 2018, Ms. Pearson informed Plaintiff that the Request was still being processed and advised that the average processing time for complex cases was "124 – 574 business days."

12. On October 9, 2018, Candice Henley, FOIA Analyst, stated that Defendant had "received a large volume of documents (100's of pages)" relating to Plaintiff's Request but that Defendant was unlikely to produce the responsive documents by the end of the month. *See* emails from Ms. Henley attached as Exhibit D.

13. Plaintiff provided additional information to Defendant to assist in the search.

14. To date, Defendant has not provided records in response to Plaintiff's Request, notwithstanding numerous inquiries and efforts. It has been 20 months since the FOIA request was submitted.

**FOR A FIRST CAUSE OF ACTION**  
***(Injunctive Relief for Violation of FIOA)***

15. Plaintiff restates and realleges each and every allegation above as if fully set forth herein.

16. Plaintiff has a legal right under FOIA to obtain the records requested in Plaintiff's Request on November 14, 2017.

17. Defendant's failure to make promptly available the records sought by Plaintiff's Request violates FOIA, 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(A)(i), and (a)(6)(C).

18. Plaintiff has exhausted all applicable administrative remedies with respect to Defendant's wrongful withholding of the requested records.

19. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested records. 5 U.S.C. § 552(a)(4)(B), plus an award of attorneys' fees.

**WHEREFORE**, Plaintiff Lesemann & Associates LLC respectfully prays that this Court:

- A. Order Defendant U.S. Department of the Treasury to disclose the requested records and make copies available to Plaintiff;
- B. Provide for expeditious proceedings in this action;
- C. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- D. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

By: s/ Ellis R. Lesemann  
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**Attorneys for Plaintiff**

September 18, 2019  
Charleston, South Carolina